

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES***

Applicant: Peter Streuer
Title: RECHARGEABLE BATTERY AND SEALING PLUG FOR A
RECHARGEABLE BATTERY
Appl. No.: 10/706,726
Filing Date: 11/12/2003
Examiner: Ben Lewis
Art Unit: 1795
Conf. No.: 7254

REPLY BRIEF UNDER 37 C.F.R. § 41.41

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Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

In reply to the Examiner's Answer to Appellant's Appeal Brief dated May 22, 2009 (hereinafter referred to as the "Examiner's Answer"), the following remarks are submitted.

These additional remarks include subject headings corresponding to the subject headings in the original Brief on Appeal filed April 22, 2009 (hereinafter referred to as the "Brief on Appeal") for ease of reference by the Board of Patent Appeals and Interferences.

REMARKS

II. The Rejection of Claims 13-18, 21-27, 30, 32, and 35 Under 35 U.S.C. § 103(a) Should Be Withdrawn, Since at Least One Element of Every Rejected Claim is Not Disclosed, Taught, or Suggested by Krabatsch.

Appellant again submits that the Examiner's rejection of Claims 13-18, 21-27, 30, 32, and 35 is improper and should be withdrawn, since Krabatsch does not disclose, teach, or suggest at least one element recited in each of the rejected claims.

A. Claims 13, 23, and 32

On page 14 of the Examiner's Answer, the Examiner stated:

Examiner notes that Krabatsch et al. teach that feature 10 of the plug is an opening. Since, there is no showing of unexpected results or showing of criticality of the end of Applicant's slots being free as claimed by Applicant as opposed to the slots of Krabatsch et al. having lower edge support 24 at the end of the slots of Krabatsch et al., the plug of Applicant is obvious variant of the plug of Krabatsch et al. Also, Examiner also notes that without the oring 24 of Krabatsch et al. being present would save material costs in the plug of Krabatsch et al.

Appellant respectfully disagrees. At the outset, Applicant notes that it is unclear why the Examiner references "feature 10" of Krabatsch. Independent Claims 13, 23, and 32 do not recite an "opening."

For example, Claim 13 recites a "sealing plug having an upper part and a lower part, the lower part comprising a splash basket" that "comprises a plurality of plates that extend from the upper end of the splash basket to the terminal end of the splash basket, the plates separated from each other by slots that extend to the terminal end of the splash basket such that the plates are not coupled together at the terminal end of the splash basket to allow free

movement of the plates at the terminal end of the splash basket” (underlining added for emphasis).

Claim 23 recites a “sealing plug having an upper part covering the openings on the outside of the cover and a lower part having a splash basket” that “comprises a plurality of plates separated by slots distributed around the circumference of the splash basket, the slots continuing to the terminal end of the splash basket such that the plates at the terminal end of the splash basket are not connected to adjacent plates” (underlining added for emphasis).

Claim 32 recites a “splash basket having an upper end and a lower terminal end” in which “the splash basket comprises a plurality of plates separated by slots that extend from the upper end of the splash basket to the terminal end of the splash basket, the slots narrowing in width from an upper end of the splash basket to the terminal end of the splash basket, wherein the plates are not connected to adjacent plates at the terminal end of the splash basket to allow free movement of the plates relative to each other upon insertion into an opening of the rechargeable battery” (underlining added for emphasis).

In contrast, Krabatsch discloses in FIG. 1 a ring-like member 24 (referred to by the Examiner as a “lower edge support 24” and an “oring 24”) at the lower end of the plug. This ring-like member 24 locks the lower end of the plug together so that there is no individual movement with respect to one another of the members that the Examiner considers to be equivalent to the “plates 15” of the present application. See Krabatsch at FIG. 1.

Thus, Krabatsch does not disclose “plates separated from each other by slots that extend to the terminal end of the splash basket such that the plates are not coupled together at the

terminal end of the splash basket to allow free movement of the plates at the terminal end of the splash basket” as recited in Claim 13, “plates at the terminal end of the splash basket are not connected to adjacent plates” as recited in Claim 23, or that the “plates are not connected to adjacent plates at the terminal end of the splash basket to allow free movement of the plates relative to each other upon insertion into an opening of the rechargeable battery” as recited in Claim 32 (underlining added for emphasis).

In regards to criticality, as discussed in the Brief on Appeal, the present specification includes numerous descriptions related to the criticality of the free ends of the plates. Paragraphs [0006] and [0014]-[0016] of the present specification are provided here as one example of such a statement (with underlining added for emphasis):

[0006] An electrical rechargeable battery which is described by the Laid-Open Specification DE 198 56 691 A1 has degassing plugs which are arranged in a cell cover and on whose lower part a splash basket is provided. On its circumference, the splash basket has slots which widen downwards. The splash basket likewise has a base, which is tilted inwards and extends upwards in a conical shape towards the center of the plug. At the bottom, the slots are bounded by the base. This makes the degassing plug stiff, which means that the degassing plug must be inserted accurately at right angles to the cell cover.

[0014] According to an exemplary embodiment, a battery (e.g., a rechargeable lead-acid vehicle battery for use in starting, lighting, and ignition applications) includes a housing which has two or more cells that can be filled with an electrolyte. . . . A sealing plug is also provided that can be introduced into each of the openings (e.g., for sealing openings which are incorporated above the cells in the battery) such that an upper part of the sealing plug covers the openings on the outside, and a lower part of the sealing plug extends in the direction of the cells and has a splash basket which surrounds a cavity and has longitudinal slots distributed over its

circumference. According to an exemplary embodiment, the slots continue as far as a free end of the splash basket.

[0015] One advantageous feature of such an arrangement is that the cover of a rechargeable battery can be sealed relatively easily by means of the sealing plug (e.g., the sealing plug need not be inserted absolutely at right angles to the cover surface). If the sealing plug is inserted obliquely into the cover of a rechargeable battery, and the splash basket in the process abuts against the inner walls of the rechargeable battery, then the insertion process can be continued further to its final position owing to the flexibility provided for the splash basket by means of the continuous slots.

[0016] According to an exemplary embodiment, the sealing plug is integral. The splash basket elasticity which is achieved by the slots is in this case advantageously transferred to the entire sealing plug. It is particularly preferable for the sealing plugs to be produced using a plastic injection-molding method. This results in the advantage of slight elasticity in the longitudinal direction as well. The mobility of the plates, which are formed by the slots, of the splash basket allows the sealing plug to be inserted into the cover via the openings even without being centered exactly.

Accordingly, Appellant has provided a clear description of the criticality of having free ends of the splash basket in which the plates are not coupled to each other to restrict their movement. The advantage of such a configuration is not disclosed, taught, or suggested by Krabatsch.

The Examiner also states on page 14 of the Examiner's Answer:

Examiner also notes that the base of the plug of DE19856691 A1 Applicant is referring to in their specification and the base of the prior art (DE3330823 A1, Krabatsch et al.) plug used in the rejection are different. The base of plug DE1985669 A1 is more restrictive than that of the prior art plug (DE3330823 A1, Krabatsch et al.) used in the final rejection).

Appellant respectfully disagrees. Both the plug of DE19856691 and the plug of Krabatsch have a member at the lower end of the splash basket that would act to restrict movement of the plates. In DE19856691, this member is member 7. See DE19856691 at FIG. 1. In Krabatsch, this member is ring-like member 24. Both the member 7 of DE19856691 and the ring-like member 24 of Krabatsch act to lock the lower end of the splash basket together so that there is no individual movement of the plates with respect to one another. See DE19856691 at FIG. 1 and Krabatsch at FIG. 1. Appellant would further like to point out that the Examiner has not rejected any of the pending claims in view of DE19856691, either alone or in combination with Krabatsch.

Thus, neither DE19856691 nor Krabatsch disclose, teach, or suggest “plates separated from each other by slots that extend to the terminal end of the splash basket such that the plates are not coupled together at the terminal end of the splash basket to allow free movement of the plates at the terminal end of the splash basket” as recited in Claim 13, “plates at the terminal end of the splash basket are not connected to adjacent plates” as recited in Claim 23, or that the “plates are not connected to adjacent plates at the terminal end of the splash basket to allow free movement of the plates relative to each other upon insertion into an opening of the rechargeable battery” as recited in Claim 32 (underlining added for emphasis).

The “rechargeable battery” recited in Claims 13 and 23, and the “sealing plug” recited in Claim 32, each considered as a whole, would not have been obvious in view of Krabatsch. At least one element recited in each of independent Claims 13, 23, and 32 is not disclosed, taught, or suggested by Krabatsch. Appellant respectfully requests that the Board withdraw the rejection of Claims 13, 23, and 32 under 35 U.S.C. § 103(a). Likewise, the rejection of dependent Claims 14-18, 21-22, 24-27, 30, and 35 should also be withdrawn for at least the same reasons.

B. Claims 15 and 24

On page 15 of the Examiner’s Answer, the Examiner stated:

Examiner notes that with respect to the shape of the slots, Krabatsch et al. do not specifically teach wherein each of the slots has a width that broadens with increasing distance from the free end of the splash basket. Unless applicant shows criticality for the claimed features, changes in size and shape is obvious absent a showing of unexpected results.

It is noted that the applicant’s slot widths and basket shape appear to be similar to, if not identical to that shown in the Figure in DE3330823.

Appellant again submits that Krabatsch (DE3330823) does not disclose, teach, or suggest that “each of the slots has a width that broadens with increasing distance from the terminal end of the splash basket” as recited in Claims 15 and 24. Instead, Krabatsch discloses rectangular slots that appear to have the same width along the entire length of the slots. See Krabatsch at FIG. 1.

The difference in slot geometries is not a trivial matter. Slots having “a width that broadens with increasing distance from the terminal end of the splash basket,” as recited in

Claims 15 and 24, for example, allows the end of the splash basket to be more “elastically deformable, in particular in response to laterally applied forces.” See Specification at page 6, lines 23-25 and FIGS. 1a-2. Additionally, as stated, e.g., in paragraph 16 of the Specification:

The splash basket elasticity which is achieved by the slots is in this case advantageously transferred to the entire sealing plug...This results in the advantage of slight elasticity in the longitudinal direction as well. The mobility of the plates, which are formed by the slots, of the splash basket allows the sealing plug to be inserted into the cover via the openings even without being centered exactly.

Accordingly, at least one element recited in each of Claims 15 and 24 is not disclosed, taught, or suggested by Krabatsch. Appellant respectfully requests that the Board withdraw the rejection of Claims 15 and 24 under 35 U.S.C. § 103(a).

C. Claims 16 and 25

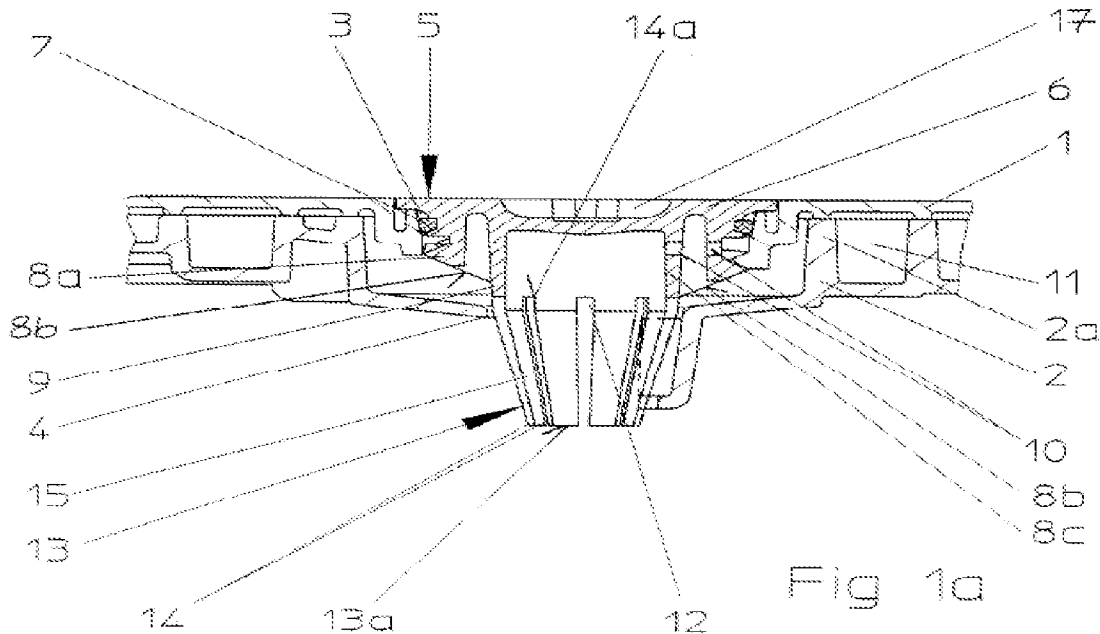
On page 16 of the Examiner’s Answer, the Examiner stated:

Examiner notes that Krabatsch et al. teach degassing openings 9 and 19 and 18 (See Figure).

Appellant respectfully disagrees. Appellant again submits that Krabatsch does not disclose, teach, or suggest that “the sealing plug has an opening provided therein separate from the slots and adjacent to the openings of the degassing system and the degassing system is connected to the splash basket via the opening in the sealing plug such that the slots form return paths for electrolyte from the degassing system” as recited in Claims 16 and 25.

The openings 9, 18, and 19 of Krabatsch are not provided “adjacent to the openings of the degassing system” (underlining added for emphasis). As can be seen, for

example, in FIG. 1a of the present application (provided below for the Board's convenience), an opening 10 is provided adjacent to the openings of the degassing system 2.



The Examiner also has provided no support for the contention that Krabatsch discloses that the “degassing system” is “connected to the splash basket via the opening in the sealing plug such that the slots form return paths for electrolyte from the degassing system.” This is not surprising, because nowhere disclosed, taught, or suggested by Krabatsch is a “sealing plug” having “an opening provided therein separate from the slots and adjacent to the openings of the degassing system and the degassing system is connected to the splash basket via the opening in the sealing plug such that the slots form return paths for electrolyte from the degassing system.”

Accordingly, at least one element recited in each of Claims 16 and 25 is not disclosed, taught, or suggested by Krabatsch. Appellant respectfully requests that the Board withdraw the rejection of Claims 16 and 25 under 35 U.S.C. § 103(a).

D. Claims 17 and 26

On page 17 of the Examiner's Answer, the Examiner stated:

Examiner notes that Krabatsch et al. discloses a plug for an accumulator "battery" therefore when in use these common components (the plug and battery) will be integral. With respect to the language "formed." This raises an issue of process limitation in a product claim.

Appellant respectfully disagrees. Appellant again submits that Krabatsch does not disclose, teach, or suggest that "the sealing plug is integrally formed as part of the degassing system" as recited in Claims 17 and 26 (underlining added for emphasis). Instead, Krabatsch discloses a "plug" that is a separate and distinct component of an "accumulator." See Krabatsch at FIG. 1. Therefore, Krabatsch does not disclose, teach, or suggest that "the sealing plug is integrally formed as part of the degassing system" as recited in Claims 17 and 26 (underlining added for emphasis).

Accordingly, at least one element recited in each of Claims 17 and 26 is not disclosed, taught, or suggested by Krabatsch. Appellant respectfully requests that the Board withdraw the rejection of Claims 17 and 26 under 35 U.S.C. § 103(a).

E. Claim 18 and 27

On pages 17 and 18 of the Examiner's Answer, the Examiner stated:

Examiner notes that Krabatsch et al. as modified by Spaziant et al. is silent as to the roughness of the splash guards. However, it is the position of the examiner that such properties are inherent, given that the materials of construction of the plug of Krabatsch et al. as modified by Spaziant et al. have an inherent roughness. A reference which is silent about a claimed invention's features is inherently anticipatory if the missing feature is necessarily present in that which is described in the reference. In re Robertson, 49 USPQ2d 1949 (1999).

Appellant notes that the Examiner has not rejected Claims 18 and 27 over Krabatsch as modified by Spaziante. Therefore, the Examiner's statements in regard to Claims 18 and 27 are improper.

Furthermore, the Examiner contends that the "roughened surface" as recited in Claims 18 and 27 is necessarily present in Krabatsch. However, this is not the case, as Krabatsch is silent as to the condition of the surface. Thus, a "roughened surface" as recited in Claims 18 and 27 is not necessarily present in Krabatsch, and is not inherently anticipated. (Appellant notes that Claims 18 and 27 are rejected under 35 U.S.C. § 103, and not 35 U.S.C. § 102.)

In contrast, as taught by the present disclosure, for example, the "roughened surface" is used "to prevent the electrolyte from being able to rise in the slots 14 in the splash basket 13 towards the cover 1, for example as a result of capillary forces." See Specification at page 7, lines 3-6. Nowhere does Krabatsch disclose, teach, or suggest such functionality, and such a roughened surface would not have been obvious in view of such reference.

Accordingly, at least one element recited in each of Claims 18 and 27 is not disclosed, taught, or suggested by Krabatsch. Appellant respectfully requests that the Board withdraw the rejection of Claims 18 and 27 under 35 U.S.C. § 103(a).

F. Claim 22

On page 18 of the Examiner's Answer, the Examiner stated:

Examiner notes that Krabatsch et al. teach that annular grooves 4 and 6 are indented, into which O-rings 5 are inserted, in order to seal part 21 with the inner wall of the cover 1 (See Figure) (See Page 2 lines 8).

Appellant again submits that Krabatsch does not disclose, teach, or suggest that “the sealing plug has a seal which is fitted to the upper part of the sealing plug for sealing the cover.” Instead, Krabatsch discloses an “o-ring 5” around an “outer circumference of the bottom part 15” (underlining added for emphasis). See Krabatsch at page 2, lines 13-14 and FIG. 1. Thus, Krabatsch does not disclose, teach, or suggest that “the sealing plug has a seal which is fitted to the upper part of the sealing plug for sealing the cover” as recited in Claim 22 (underlining added for emphasis).

Accordingly, at least one element recited in Claim 22 is not disclosed, taught, or suggested by Krabatsch. Appellant respectfully requests that the Board withdraw the rejection of Claim 22 under 35 U.S.C. § 103(a).

III. The Rejection of Claims 19-20, 28-29, and 33 Under 35 U.S.C. § 103(a) Should Be Withdrawn, Since at Least One Element of Every Rejected Claim is Not Disclosed, Taught, or Suggested by the Combination of Krabatsch and Spaziante.

Appellant again submits that the Examiner’s rejection of Claims 19-20, 28-29 and 33 is improper and should be withdrawn since the combination of Krabatsch and Spaziante does not disclose, teach, or suggest at least one element recited in each of the rejected claims.

A. Claims 19 and 20

On page 19 of the Examiner’s Answer, the Examiner stated:

Examiner notes that the instant specification recites “the state of charge indicator and/or electrolyte level indicator may also have a roughened surface” (Paragraph 0019). Thomas et al and Spaziante et al are silent as to the roughness of the charge indicator and/or electrolyte level indicator. However, it is the position of the examiner that such properties are inherent, given that the materials of construction of the charge indicator and/or electrolyte level

indicator of Thomas et al. and Spaziente et al have an inherent roughness. A reference which is silent about a claimed invention's features is inherently anticipatory if the missing feature is necessarily present in that which is described in the reference. In re Robertson, 49 USPQ2d 1949 (1999).

Appellant respectfully disagrees, and notes that it is unclear what "Thomas" reference the Examiner is referring to, since Claims 19 and 20 were not rejected in view of a "Thomas" reference. Assuming that the Examiner intended to refer to "Krabatsch" instead of "Thomas," Appellant submits that Claims 19 and 20 are patentable over the combination of Krabatsch and Spaziente for at least two reasons.

First, as the Examiner has admitted in the Office Action mailed October 6, 2008, that Krabatsch does not disclose, teach, or suggest "an acid level indicator" as recited in Claim 19 or "a state of charge indicator" as recited in Claim 20. Thus, Krabatsch cannot possibly disclose, teach, or suggest that "the acid level indicator has a roughened surface" or that "the state of charge indicator has a roughened surface."

Secondly, Spaziente teaches away from "the acid level indicator" and the "state of charge indicator" having "a roughened surface." For example, Spaziente teaches that a "reference electrode" has a "glass capillary 4." See Spaziente at page 6, line 13. The "glass capillary 4" has a smooth surface, not a roughened surface, in order to encourage fluid flow through capillary forces. In contrast, the "acid level indicator" recited in Claim 19 and the "state of charge indicator" recited in Claim 20 each specifically has a "roughened surface" in order to prevent the effects that might occur due to capillary forces. See Specification at page 7, lines 3-5 and 20-24.

Accordingly, at least one element recited in each of dependent Claims 19 and 20 is not disclosed, taught, or suggested by the combination of Krabatsch and Spaziente. Appellant respectfully requests that the Board withdraw the rejection of Claims 19 and 20 under 35 U.S.C. § 103(a).

B. Claims 28 and 29

On pages 19 and 20 of the Examiner's Answer, the Examiner stated:

With respect to slots including a free end extending toward the free end of the splash basket, Krabatsch et al. teach that feature 10 of the plug is an opening.

Since there is no showing of unexpected results or showing of criticality of the end of Applicant's slots being free as claimed by Applicant as opposed to the slots of Krabatsch et al. having lower edge support 24 at the end of the slots of Krabatsch et al., the plug of Applicant is obvious variant of the plug of Krabatsch et al.

Appellant respectfully disagrees. It is unclear why the Examiner references "feature 10" of Krabatsch. Claims 28 and 29 depend from independent Claim 23, which does not recite an opening. Instead, Claim 23 recites a "rechargeable battery" comprising, in combination with other elements, a "sealing plug having an upper part covering the openings on the outside of the cover and a lower part having a splash basket" that "comprises a plurality of plates separated by slots distributed around the circumference of the splash basket, the slots continuing to the terminal end of the splash basket such that the plates at the terminal end of the splash basket are not connected to adjacent plates" (underlining added for emphasis).

In contrast to the "rechargeable battery" recited in Claim 23, Krabatsch discloses in FIG. 1, for example, a ring-like member 24 (referred to by the Examiner as a "lower edge support 24" and an "oring 24") at the lower end of the plug. This ring-like member 24 locks the

lower end of the plug together so that there is no individual movement with respect to one another of the members that the Examiner considers to be equivalent to the “plates 15” of the present application. See Krabatsch at FIG. 1.

Krabatsch does not disclose “plates at the terminal end of the splash basket are not connected to adjacent plates” as recited in Claim 23 (underlining added for emphasis).

With respect to criticality, as discussed above and in the Brief on Appeal, the present specification includes numerous descriptions related to the criticality of the free ends of the plates. For example, paragraphs [0006] and [0014]-[0016] of the present specification are evidence of criticality.

Accordingly, Appellant has provided a clear description of the criticality of having free ends of the splash basket in which the plates are not coupled to each other to restrict their movement. The advantage of such a configuration is not disclosed, taught, or suggested by Krabatsch.

The Examiner also notes on page 20 of the Examiner’s Answer:

With respect to allowing the splash basket to flex upon insertion into the openings of the degassing system, Krabatsch et al. discloses having lower edge support 24 at the end of the slots of Krabatsch et al., the plug of Applicant is obvious variant of the plug of Krabatsch et al. Examiner also notes that without the oring 24 of Krabatsch et al. being present would save material costs in the plug of Krabatsch et al. Examiner notes that oring 24 is a flexible material that would allow the splash basket of Krabatsch et al. to flex upon insertion into the openings of the degassing system of Krabatsch et al.

Appellant respectfully disagrees. The Examiner improperly applies Krabatsch to the present application both with and without the “oring 24.” First, the Examiner argues that

“without the oring 24 of Krabatsch et al. being present would save material costs” (underlining added for emphasis). The Examiner then immediately argues Krabatsch as having the “oring 24” because the “oring 24 is a flexible material that would allow the splash basket of Krabatsch et al. to flex upon insertion into the openings of the degassing system of Krabatsch et al.”

Furthermore, Krabatsch is silent as to the material of the “oring 24” – the Examiner has provided no support for the suggestion that the “oring 24” is flexible. In fact, the Examiner earlier states that the “oring 24” is a “lower edge support 24,” implying that “oring 24” is not flexible.

Combining Spaziante with Krabatsch does not cure the deficiencies of Krabatsch. The combination of Krabatsch and Spaziante does not disclose, teach, or suggest that “the plates at the terminal end of the splash basket are not connected to adjacent plates, whereby the separation of the plates at the terminal end of the splash basket allows the splash basket to flex upon insertion into the openings of the degassing system.”

Accordingly, at least one element recited in each of dependent Claims 28 and 29 is not disclosed, taught, or suggested by the combination of Krabatsch and Spaziante. Appellant respectfully requests that the Board withdraw the rejection of Claims 28 and 29 under 35 U.S.C. § 103(a).

C. Claim 33

On pages 20-21 of the Examiner’s Answer, the Examiner stated:

With respect to slots including a free end extending toward the free end of the splash basket, Krabatsch et al. teach that feature 10 of the plug is an opening.

Since, there is no showing of unexpected results or showing of criticality of the end of Applicant's slots being free as claimed by the Applicant as opposed to the slots of Krabatsch et al. having lower edge support 24 at the end of the slots of Krabatsch et al., the plug of Applicant is obvious variant of the plug of Krabatsch et al.

Appellant respectfully disagrees. As stated above, it is unclear why the Examiner references "feature 10" of Krabatsch. Claim 33 depends from independent Claim 32, which does not recite an opening. Instead, Claim 32 recites a "sealing plug" comprising, in combination with other elements, a "splash basket having an upper end and a lower terminal end" in which "the splash basket comprises a plurality of plates separated by slots that extend from the upper end of the splash basket to the terminal end of the splash basket, the slots narrowing in width from an upper end of the splash basket to the terminal end of the splash basket, wherein the plates are not connected to adjacent plates at the terminal end of the splash basket to allow free movement of the plates relative to each other upon insertion into an opening of the rechargeable battery" (underlining added for emphasis).

In contrast to the "sealing plug" recited in Claim 32, Krabatsch discloses in FIG. 1, for example, a ring-like member 24 (referred to by the Examiner as a "lower edge support 24" and an "oring 24") at the lower end of the plug. This ring-like member 24 locks the lower end of the plug together so that there is no individual movement with respect to one another of the members that the Examiner considers to be equivalent to the "plates 15" of the present application. See Krabatsch at FIG. 1.

Krabatsch does not disclose that the "plates are not connected to adjacent plates at the terminal end of the splash basket to allow free movement of the plates relative to each other"

upon insertion into an opening of the rechargeable battery” as recited in Claim 32 (underlining added for emphasis).

With respect to criticality, as discussed above and in the Brief on Appeal, the present specification includes numerous descriptions related to the criticality of the free ends of the plates. For example, paragraphs [0006] and [0014]-[0016] of the present specification are evidence of criticality.

Accordingly, Appellant has provided a clear description of the criticality of having free ends of the splash basket in which the plates are not coupled to each other to restrict their movement. The advantage of such a configuration is not disclosed, taught, or suggested by Krabatsch.

The Examiner also notes on page 21 of the Examiner’s Answer:

With respect to allowing the splash basket to flex upon insertion into the openings of the degassing system, Krabatsch et al. discloses having lower edge support 24 at the end of the slots of Krabatsch et al., the plug of Applicant is obvious variant of the plug of Krabatsch et al. Examiner also notes that without the oring 24 of Krabatsch et al. being present would save material costs in the plug of Krabatsch et al. Examiner notes that oring 24 is a flexible material that would allow the splash basket of Krabatsch et al. to flex upon insertion into the openings of the degassing system of Krabatsch et al.

Appellant respectfully disagrees. As described above, the Examiner is improperly applying Krabatsch to the present application both with and without the “oring 24,” and Krabatsch is silent as to the material of the “oring 24,” thus providing no support for the Examiner’s contention that the “oring” is flexible.

Combining Spaziante with Krabatsch does not cure the deficiencies of Krabatsch.

The combination of Krabatsch and Spaziante does not disclose, teach, or suggest that “the plates at the terminal end of the splash basket are not connected to adjacent plates, whereby the separation of the plates at the terminal end of the splash basket allows the splash basket to flex upon insertion into the openings of the degassing system.”

Accordingly, at least one element recited in dependent Claim 33 is not disclosed, taught, or suggested by the combination of Krabatsch and Spaziante. Appellant respectfully requests that the Board withdraw the rejection of Claim 33 under 35 U.S.C. § 103(a).

CONCLUSION

In view of the foregoing and the arguments presented in Appellant's Brief on Appeal, Appellant submits that:

1. Claims 13-18, 21-27, 30, 32, and 35 may not be properly rejected under 35 U.S.C. § 103(a) over Krabatsch;
2. Claims 19-20, 28-29, and 33 may not be properly rejected under 35 U.S.C. § 103(a) over Krabatsch et al. in view of Spaziante; and
3. Claims 31 and 36 may not be properly rejected under 35 U.S.C. § 103(a) over Krabatsch et al. in view of Richter.

Appellant therefore submits that all pending claims of the present application are patentable over the references cited by the Examiner. Accordingly, Appellant respectfully requests that the Board reverse all claim rejections and indicate that a notice of allowance respecting all pending claims should be issued.

Respectfully submitted,

Date: July 10, 2009

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